

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

PHILLIP PETRONE,)	
)	
Plaintiff,)	8:11CV401
)	
v.)	
)	
WERNER ENTERPRISES, INC.,)	
d/b/a WERNER TRUCKING, and)	
DRIVERS MANAGEMENT, LLC)	
)	
Defendants.)	
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PHILLIP PETRONE,)	
)	
Plaintiff,)	8:12CV307
)	
v.)	
)	
WERNER ENTERPRISES, INC.,)	MEMORANDUM AND ORDER
d/b/a WERNER TRUCKING, and)	
DRIVERS MANAGEMENT, LLC)	
)	
Defendants.)	
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This matter is before the Court on defendant Werner Enterprises' submission of fees and expenses (Filing No. 278 in 8:11CV401; Filing No. 182 in 8:12CV307). The submission was filed in response to the Court's order (Filing No. 275 in 8:11CV401; Filing No. 179 in 8:12CV307) requesting costs incurred as a result of the late submission of plaintiffs' supplemental expert report. Plaintiffs have filed an opposition brief (Filing No. 281 in 8:11CV401; Filing No. 185 in 8:12CV307).

In determining the appropriate amount of expenses to approve, the Court's consideration included the following facts:

1) Plaintiffs' motion to file a supplemental report was filed more than a month before the deadline for *Daubert* motions and more than two months before the deadline for summary judgment motions. The motion also included a request for expedited briefing to resolve the matter with minimal disruption to the briefing schedule. Because of a mistake in the Court's docket management system, there was some delay in ruling on the motion that was not within the control of the plaintiffs.

2) Rather than wait until the additional costs for experts, legal research, and brief writing have actually been incurred, defendants have chosen to submit their expenses now -- relying on a summary statement of the costs incurred in producing the original expert analysis and legal work. Some of the original work will undoubtedly be re-used when defendants file motions in accordance with the new scheduling order. However, a summary of the original work is not conducive to a highly accurate assessment of the work that will need to be duplicated or that could have been avoided had plaintiffs filed their full expert report in a timely manner.

3) The Court has already ordered that the second deposition of plaintiffs' expert will be at plaintiffs' expense.

The Court finds that all costs submitted by defendants should be reduced by 75%, except that the costs associated with the Brief in Opposition to Motion to Modify Progression Order should be reduced by only 25%. Accordingly,

IT IS ORDERED that plaintiffs shall pay defendant Werner Enterprises costs in the amount of \$61,222.14.

DATED this 29th day of July, 2014.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court